## UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

PHILLIP B. ASHDOWN,	) 3:11-cv-00832-LRH-WGC
Plaintiff,	) <u>MINUTES OF PROCEEDINGS</u>
vs.	) January 23, 2013
PRISON HEALTH SERVICES, et al.,	) )
Defendants.	) ) )
PRESENT: THE HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE	
DEPUTY CLERK: Katie Lynn Ogden	REPORTER: FTR
COUNSEL FOR PLAINTIFF: Phillip B. Ashdown, In Pro Per (Telephonically)	
COUNSEL FOR DEFENDANT(S): Elizabeth Hickman	

## **MINUTES OF PROCEEDINGS: Motion Hearing**

9:31a.m. Court convenes.

The court first addresses plaintiff's Motion to Extend Time (Dkt. #127). The court notes that it appears the subject of this motion is moot because plaintiff has filed his Objections to the Report and Recommendation on September 18, 2012 (Dkt. #128). Plaintiff concurs with the courts observation that the subject matter is moot at this time. Therefore, plaintiff's Motion to Extend Time (Second Request) to File Objections Regarding Dkt. #108 Report and Recommendation (Dkt. #127) is **DENIED as moot**.

The court next addresses plaintiff's Motion to Stay (Dkt. #111). As reflected in the Minutes of Proceeding Order (Dkt. #119), the court had advised the parties that the motion to stay would be addressed by District Judge Hicks. Thereafter, Magistrate Judge Cobb was informed and directed to proceed and address the motion. Therefore, the court requests that Mr. Ashdown briefly summerize his motion to stay.

Mr. Ashdown informs the court that he had been denied the right for a place (i.e. library, "day-room") to work on his legal work at the Northern Nevada Correctional Center ("NNCC"). Mr. Ashdown indicates that he did file a grievance with NNCC in attempt to resolve the problem at the institutional level. Mr. Ashdown represents that his attempt to resolve the problem at the institutional level was successful and NNCC reopened the "day-room." In light of this, and for reason that Mr. Ashdown is no longer in confinement with the Nevada Department of

## MINUTES OF PROCEEDINGS

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Corrections ("NDOC"), Mr. Ashdown advises the court that the subject matter in this instant motion is moot. Based on Mr. Ashdown's representation, plaintiff's Motion to Stay (Dkt. #111) is **DENIED as moot.** 

The court turns to plaintiff's Motion for Leave to Amend Complaint (Dkt. #126) and defendants' Partial Opposition to Plaintiff's Motion for Leave to Amend Complaint (Dkt. #129). Defendants represents that they do not oppose plaintiff's motion to amend his complaint insofar as he requests the dismissal of the named defendant "Prison Health Services." However, defendants do oppose plaintiff's motion insofar he requests to add a defendant he identifies as "Nevada Department of Corrections Medical Department/Division" because it is an agency of the state and the state is immune from suit under 42 U.S.C. § 1983. Ms. Hickman further states that the NDOC has been recommended to be dismissed with prejudice in the Report and Recommendation filed on September 18, 2012 (Dkt. #108).

After hearing the parties' respective positions, plaintiff's Motion to Amend (Dkt. #126) to the extent plaintiff seeks to eliminate the entity "Prison Health Services" as a defendant in this action is **GRANTED**. The court informs the parties that, at the present time, plaintiff's request to substitute NDOC as a named defendant in this action is being addressed by the pending Report and Recommendation (Dkt. #108). In light of this, the court is not inclined to revisit the subject matter while the Report and Recommendation is before District Judge Hicks. Therefore, to the extent plaintiff seeks to substitute NDOC as a named defendant in this action is **DENIED** without prejudice.

9:50 p.m. Court Adjourns.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

By: /s /
Katie Lynn Ogden, Deputy Clerk